

June 29, 2023

THIS LETTER SENT VIA EMAIL

Mr. Rory Howe, Director
Financial Management Group
Centers for Medicaid and CHIP Services
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244-1850

CALIFORNIA REQUEST FOR WAIVER FOR MANAGED CARE ORGANIZATION TAX

Dear Mr. Howe:

California's Assembly Bill 119 (Chapter 13, Statutes 2023) enacts a new Managed Care Organization (MCO) tax, effective for a taxing period of April 1, 2023, through December 31, 2026. The California Department of Health Care Services (California or DHCS) submits this letter requesting a waiver of the broad-based and uniformity provisions, pursuant to 42 C.F.R. §433.72, for the MCO tax structure described herein and in the enclosed model. Similar to the prior version of California's MCO tax that was enacted pursuant to California Assembly Bill 115 (Chapter 348, Statutes 2019) and approved by the Centers for Medicare & Medicaid Services for an effective date of January 1, 2020,¹ this new MCO tax is broadly applied across full-service health care plans and their commercial lines of business and not just Medi-Cal lines of business, consistent with federal law and controlling CMS guidance.

California requests approval of a waiver of the broad-based and uniformity provisions of section 1903(w)(3)(B) and (C) of the Social Security Act, with a requested effective date of April 1, 2023. For the first nine months of the proposed model (April 1, 2023, through December 31, 2023), each applicable health plan's MCO tax amount is calculated for the full calendar year and then reduced for the applicable nine-month period.

¹ Certification of Federal Approval for Modified AB 115 Managed Care Organization tax available at: <https://www.dhcs.ca.gov/services/Documents/WaiverMCOtaxApproval-4-15-20.pdf>.

The terms of the MCO tax for which the waiver is sought are as follows:

- (i) Cumulative Medi-Cal member months from 0 to 1,250,000, inclusive, are taxed at the following rates: \$0.00 for April 1, 2023 – December 31, 2023; \$0.00 in calendar year (CY) 2024; \$0.00 in CY 2025; \$0.00 in CY 2026.
- (ii) Cumulative Medi-Cal member months from 1,250,001 to 4,000,000, inclusive, are taxed at the following rates: \$182.50 for April 1, 2023 – December 31, 2023; \$182.50 in CY 2024; \$187.50 in CY 2025; \$192.50 in CY 2026.
- (iii) Cumulative Medi-Cal member months in excess of 4,000,000 are taxed at the following rates: \$0.00 for April 1, 2023 – December 31, 2023; \$0.00 in CY 2024; \$0.00 in CY 2025; \$0.00 in CY 2026.
- (iv) Cumulative Other member months from 0 to 1,250,000, inclusive, are taxed at the following rates: \$0.00 for April 1, 2023 – December 31, 2023; \$0.00 in CY 2024; \$0.00 in CY 2025; \$0.00 in CY 2026.
- (v) Cumulative Other member months from 1,250,001 to 4,000,000, inclusive, are taxed at the following rates: \$1.75 for April 1, 2023 – December 31, 2023; \$1.75 in CY 2024; \$2.00 in CY 2025; \$2.25 in CY 2026.
- (vi) Cumulative Other member months in excess of 4,000,000 are taxed at the following rates: \$0.00 for April 1, 2023 – December 31, 2023; \$0.00 in CY 2024; \$0.00 in CY 2025; \$0.00 in CY 2026.

The MCO tax model is based on enrollment in each applicable health plan using data for the January 1, 2022, through December 31, 2022, year, as modified by DHCS to account for the non-renewal of UnitedHealthcare Community Plan of California, Inc.'s contract as of January 1, 2023, and for known or anticipated changes that will affect Medi-Cal enrollment on or after January 1, 2024.

The value for the B1/B2 is 1.1367 for April 1, 2023 – December 31, 2023, 1.4324 for CY 2024, 1.4325 for CY 2025, and 1.4327 for CY 2026.

Please note that, pursuant to federal law and requirements, the MCO tax is not assessed on Medicare enrollment or on enrollment under the Federal Employees Health Benefits Act of 1959. In addition, to avoid duplicative taxing, the tax is not assessed on plan-to-plan enrollees (individuals enrolled in a plan who are enrolled through a subcontract from another plan. The tax model does not exempt any full-service health care plan within the applicable MCO provider class from the tax.

Waiver Justification: We believe the MCO tax proposal satisfies the criteria for waiver under 42 C.F.R. §433.72(b), as summarized below:

- The net impact of the tax is generally redistributive, as demonstrated by the results of the B1/B2 test set forth above and in the enclosed model.
- The amount of the tax is not directly correlated to Medicaid payments, and the tax is applied to both Medicaid and non-Medicaid lines of business and to both plans that do and do not participate as Medicaid managed care plans.
- The MCO tax does not fall within the hold harmless provisions specified in 42 C.F.R. §433.68(f):
 - The state does not provide for any direct or indirect non-Medicaid payment to health plans paying the tax that is positively correlated with either the tax amount or the difference between the Medicaid payment and the tax amount.
 - Any portion of the Medicaid payment to the MCO taxpayer that varies based on tax amount is attributable to federal requirements for setting actuarially sound capitation rates for Medicaid managed care plans in accordance with 42 C.F.R. §438.4.
 - There is no direct or indirect guarantee by the state to hold MCO taxpayers harmless for all or any portion of the tax amount, and the aggregate revenue from the tax will not exceed six percent of MCO revenues projected for the taxing period.

We have provided the MCO tax model along with this submission that demonstrates the above taxing structure and the B1/B2 test results. We would be pleased to provide any additional information that you require for processing this request. We look forward to your favorable response.

Sincerely,

Jacey Cooper
State Medicaid Director
Chief Deputy Director
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cc: See Next Page

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